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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/054,069 | 01/22/2002 | George T. Blike | ALLIA.229A | 3894 |

7590

03/03/2004

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| EXAMINER |
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NASSER, ROBERT L

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| ART UNIT | PAPER NUMBER |
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3736

22

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,069

Applicant(s)

BLIKE, GEORGE T.

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-14, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-18 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9.20.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Applicant's election of species IV, claims 15-18 and 21-25 in Paper No. 22 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 refers to "the object." However, two different data objects have been previously recited and it is unclear which one is being referred to. Clarification is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15, 21, 22, 23, 24, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Woodring et al. Woodring obtains data from both the ventilator and patient, including, for example, the mode of ventilation, pressure or volume, and has one set of data objects displayed for volume ventilation (see figure 23-26) and one set of data objects for pressure ventilation (see figures 27-29). The data is placed onto the

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display, e.g. mapped onto a data object, by comparison with other data, such as alarm limits.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Woodring et al in view of Gilmore et al. Gilmore shows a display for a ventilator that shows real time flow information including the direction of flow (+/- pressure or flow show the direction). Hence , it would have been obvious to modify Woodring to show the direction of flow, so as to provide the physician with more information regarding the patient's condition. The examiner notes that applicant has given no specific reason for selecting arrows, nor has applicant stated that such a selection solves a stated problem. In addition, the use of arrows to show direction in a display is clearly well known. Therefore, it would have been a mere matter of design choice for one skilled in the art to choose the proper display technique, as any technique would be expected to work equally as well as the other.

Claims 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Woodring et al in view of Wallace et al. Woodring does not show the parameters in horizontal displays. However, it does display the parameters. Wallace shows a volume ventilation display including horizontal bar graphs for inspiratory time, expiratory time and breath cycle time. Hence, it would have been obvious to modify Woodring to use such a

display method, as it is merely the substitution of one known display for another. In addition, Woodring displays the respiratory rate. From the teaching of Wallace to use horizontal graphs, it would have been obvious to modify Woodring to use such a graph for respiratory rate, as again, it is merely the substitution of one known display technique for another.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woodring et al. Woodring et al displays the recited parameters, but does not do so on a vertical scale. The examiner notes that applicant has given no specific reason for selecting a vertical scale, nor has applicant stated that such a selection solves a stated problem. In addition, the use of vertical scales is clearly well known. Therefore, it would have been a mere matter of design choice for one skilled in the art to choose the proper display technique, as any technique would be expected to work equally as well as the other.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schreiber et al shows a display for a ventilator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser
Primary Examiner
Art Unit 3736

RLN
February 23, 2004

Robert L. Nasser
ROBERT L. NASSER
PRIMARY EXAMINER
ART UNIT 3736